IN THE

Supreme Court of the United States

OCTOBER TERM 1963

No. 1050

CITY OF DETROIT,
a Michigan Municipal Corporation,
and
COUNTY OF WAYNE,
a Michigan Constitutional Body Corporate,
Petitioners and Appellants,
vs.
GENERAL MOTORS CORPORATION,
a Delaware Corporation,
Respondent and Appellee

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN and APPENDIX

(For List of Attorneys see inside front cover)

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a Michigan Constitutional Body Corporate,
Petitioners and Appellants,
vs.
GENERAL MOTORS CORPORATION,
a Delaware Corporation,
Respondent and Appellee

PETITION FOR WRIT OF CERTIORARI

To: The Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Michigan, entered in the above-entitled cause on February 3, 1964.

A. OPINIONS BELOW

The opinion of the Supreme Court of Michigan, highest court of said State, appears in 126 N.W. 2d 108. Opinion and judgments entered in Wayne Circuit Court were not reported but appear in Appendix of Appellants (printed for the Supreme Court of Michigan on petitioner-appellants' appeals), nine copies of which Appendix have been filed with this Court. (Rule 23, (iii) f.)

B. JURISDICTION

(1) Two suits for recovery of disputed city and county of Wayne personal property taxes for 1959 based on an assessment placed against appellee and respondent by order of Michigan State Tax Commission dated November 13, 1959, were consolidated for purposes of trial in the Wayne Circuit Court and again on appeal. Said suits were disposed of together by opinion of Michigan Supreme Court February 3, 1964, in Appeal Nos. 50261 and 50260 affirming summary judgments ordered by the Trial Judge. The Supreme Court, without applying the tests of constitutional immunity, held that machinery and equipment owned by the United States and possessed and used by defense contractor in making goods for United States were not subject to city or general property taxes on personal property.

(2) Jurisdiction of this Court to issue a writ of certiorari is conferred by C. 646, 62 Stat. 929 (28 U.S.C.A. 1257 (3)); C. 646, 62 Stat. 961, as amended by C. 139 §106, 63 Stat. 104 (28 U.S.C.A. 2101(c)).

The issues raised being identical, this petition is intended to apply to both the city and county case in conformance with Rule 23.(5).

C. QUESTIONS PRESENTED FOR REVIEW

1. Whether there is a conflict with *Detroit v. Murray Corporation* (355 U.S. 489) in determination of Michigan's Supreme Court that machinery and equipment owned by United States and possessed and used by defense contractor (General Motors Corp.) in making goods for United States were not subject to city or general taxes on personal property.

2. Whether the determination of Michigan's Supreme Court disregarded tests established by this Court in Murray for implied constitutional immunity from non-discriminatory local property taxes.

3. Whether these local non-discriminatory taxes and the laws on which same are based are valid inasmuch as no direct burden was imposed on the Federal Government in violation of its implied constitutional immunity.

4. Where state law and local charter have been held to authorize taxes against a person in possession of tangible personal property, title to which is in another, does the fact that here title to such property is in the United States render the taxes invalid.

5. Whether private defense contractor may have the benefit of immunity from non-discriminatory local taxes on personal property, title to which is in the United States, and which is located in contractor's plant and which it is using on tax day.

D. STATUTES INVOLVED

Statutory provisions connected with the issues are referred to below. Being too lengthy to set forth here in full, the pertinent text appears in Appendix A attached hereto.

Sec. 211.4, C. L. Mich., 1948;

Sec. 211.53, Ibid.;

Sec. 7, Ch. II, Title VI, Charter of City of Detroit;

Sec. 1, Ch. IV, Title VI, Ibid.;

Sec. 26, Ch. IV, Title VI, Ibid.;

Local Act Mich. 1879, No. 378 as amended by Local Act Mich. 1943, No. 6 and by Local Act Mich. 1951, No. 5.

E. STATEMENT OF THE CASE

(Numbers in parentheses are references to the separately bound Appendix of Appellants (petitioners herein), filed in Michigan Supreme Court, unless otherwise noted.)

The matter here presented involves the review of two consolidated causes brought by respondent-appellee to recover non-discriminatory personal property ad valorem taxes levied by petitioner-appellants based on a common assessment as of December 31, 1958, placed against respondent by Michigan State Tax Commission on November 13, 1959. Said causes were based on respondent's claims for refund of 1959 city, school, and county taxes paid under protest to the respective petitioners. These taxes were levied and imposed upon respondent because of location within respondent's Cadillac Motor Car Division Plant in Detroit of certain machinery and equipment, furniture, and fixtures, title to which was admittedly in the United States. (App. 35a, 50a)

United States-owned personalty alone is involved, not machinery or equipment owned by respondent, nor inventory of parts, supplies, or other required items being worked on in the course of producing the items called for by respondent's supply contracts with the Government. (App. 47a)

The amount of the assessment ($2,354,630.) represents valuation of the personalty involved, arrived at the same as it would have been had the title to said machinery not been in the United States. Said machinery was available for operation by respondent's employees and was, in fact, being operated by them on December 31, 1958—tax day in Michigan. (App. 49a)

Excluded from the assessment were certain items of machinery which were recognized as being idle and not in use on such date. (App. 49a)

The personalty here involved was assessed, i.e., the value thereof was included by Michigan State Tax Commission, in an assessment placed against plaintiff "as the person in possession subject to prior rights of the Federal Government." (App. 50a)

Such assessment and respective taxes based thereon were ad valorem in nature. The amounts thereof were spread upon the tax rolls of petitioners City and County in the same manner as in the case of personal property subject to Michigan's General Property Tax Act, P.A. 1893, No. 206, as amended; and the Charter of City of Detroit, 1919 (Title VI, Chapters 2 and 4, as amended). (App. 50a)

On January 7, 1960, respondent made payment of city and school taxes in the amount of $100,396.70; and on January 15, 1960, also paid county taxes in the amount of $16,466.64, based on said 1959 assessment of $2,354,630. Said payments were accompanied by letters to the respective collectors of taxes in which were specified the grounds of respondent's protest in conformance with Sec. 53 of the Tax Act (211.53, C.L. Mich.). (App. 50a-51a)

Prior to hearing on respondent's motion for summary judgment, depositions were taken at request of both parties; records of respondent were examined and stipulations prepared, executed, and filed to the end that these causes could be submitted to the Trial Judge so far as possible upon undisputed facts. (App. 37a) Withholding decision on the motion for summary judgment, testimony was heard; and although a full trial was held, the Circuit Judge issued his opinion in favor of respondent granting summary judgments for which Orders were entered against the respective petitioners on January 9, 1963. (App. 78a, 80a).

Following appeals and oral argument to Michigan's court of last resort, the Orders for summary judgment were affirmed based on opinion of the Supreme Court of Michigan in the two causes as reported in 126 N.W. 2d 108. A copy of the latter opinion is appended hereto as Appendix B. (Rule 23 (5ii) i)

(a) Federal Questions Raised Below

Federal questions challenging validity of the Michigan statutes including Charter of Detroit on the ground of their being repugnant to the Constitution of the United States were timely and properly raised. Notably, at the following stages of the proceedings below:

(a) Second Amended Declaration, (App. 7a), paragraphs 6, 7 (App. 9a and 13a);

(b) Consolidated Answer (App. 19a), paragraphs 6, 7 (App. 21a, 26a);

(c) Reply (App. 33a), paragraph 2 (App. 33a);

(d) Stipulation of Facts (App. 37a), paragraphs 26 (App. 47a); 27 (App. 48a); 31, 32, 33 (App. 50a);

(e) Summary of the Results of the Pre-trial Conference (App. 54a, 56a, 57a, 58a);

(f) Opinion of the Court (App. 74a-78a).

Significantly, the Trial Court stated (76a):

> "Prior to Murray no attempt was ever made to levy and collect such a tax under these circumstances. Then along came Murray where the Supreme Court of the United States, according to Continental misconstrued our tax laws and opened the door to litigation such as we have in the instant case."[1]

Among Statement of Questions Involved in appellants' (petitioners herein) Brief in the Michigan Supreme Court were the following, which raised pertinent Federal questions for review:

> "V. Was it proper for the Trial Judge to declare as overruled the decision of the United States Supreme Court in Murray (355 U.S. 489) which decision was concerned with the Government's implied constitutional immunity from State or Local Taxation which interferes with its property, agencies or instrumentalities?
>
> "The Trial Judge said 'Yes'.
>
> Appellants say the answer should be 'No'."
>
> "VI. Did the Trial Judge misinterpret the majority opinion in Murray which had accepted the construction of Michigan's State and Local Tax laws by our Supreme Court rather than arriving at a construction of its own as the basis for the United States Supreme Court's determination that the tax against Murray was constitutionally valid?
>
> "The Trial Judge did not discuss this issue.
>
> Appellants say the answer should be 'Yes'."

---

[1] Continental Motors Corp. v. Township of Muskegon, (1961) 112 N.W. 2d 429. (A copy of this opinion is also appended to Appendix For Appellants separately filed herewith.)

"VII. Did the conclusion of the Trial Judge, based on the lone dissent of Mr. Justice Frankfurter (357 U.S. 913) on Petition for Rehearing in Murray, fail to distinguish between an ad valorem tax involving real estate, which is in rem, and an ad valorem tax involving personalty, which is in personam?

"The Trial Judge did not discuss this issue. Appellants say the answer should be 'Yes'."

The opinion of Dethmers, J., does not mention the statement of the Trial Court: "Murray has been overruled". Neither are comments made on reliance by the Trial Court on dissenting opinion in Murray by Frankfurter, J., (App. 76a). However, it is significant that Dethmers, J., the very first time Murray is referred to, cites 355 U.S. 489 but adds 78 S. Ct. 458 and 486; 2 L. Ed. 2d 441 and 460, the latter pages of which carry the dissent of Frankfurter, J., in the series of tax cases decided on March 3, 1958 by this Court.

Finally, on the third and final question raising such Federal question, the opinion of Dethmers, J., states (110 N.W. 2d 126 N.W. 2d):

"Defendants' discussions of where the legal incidence, as distinguished from economic burden of the tax, falls, and whether it represents an assessment in personam or in rem, while of possible value in a consideration of the question of implied constitutional immunity from State taxation of the Federal government, its agencies and property, are not decisive of the applicability of Continental."

Further, it was stated (Ibid):

"Either way the tax was improperly assessed. Cases such as Detroit Shipbuilding Co. v. City of Detroit, 228 Mich. 145, (199 N.W. 645) and City of Detroit v. Gray, 314 Mich. 516, (22 N.W. 2d 771)

interpreting the charter provision here pressed by defendants, are of no help to them because those cases involved personal property owned by one person and in the possession of another, not, as here, property of the United States immune from taxation."

F. REASONS FOR GRANTING THE WRIT

1. Decision of the Michigan Supreme Court is probably not in accord with Detroit, et al. v. The Murray Corporation, (1958) 355 U.S. 489.
2. Need for clarification of intent of Murray decision for future inter-Federal-State relationships.
3. Effect on United States and local communities.
4. Pending litigation in which petitioners are involved.

1. Conflict with Decision in Murray

The introduction by the reporter in General Motors opinion at bottom of p. 108 (126 N.W. 2d) reads:

> "Actions to recover personal property taxes paid under protest. The circuit court of Wayne County, Joseph A. Moynihan, Jr., rendered summary judgments against defendants and they appealed. The Supreme Court, Dethmers, J., held that machinery and equipment owned by United States and possessed and used by defense contractor in making goods for United States were not subject to city or general tax on personal property."

The importance of having a writ issue is highlighted by this summation. It reveals that the decision of the Michigan Supreme Court is probably not in accord with applicable decisions and, notably, the holding of this Court in Detroit and Wayne County v. The Murray Corporation, 355 U.S. 489.

The instant cases are virtually the same as Murray.

The identical statutory and Charter provisions are involved.

Identical authorities were claimed in support.

Similar procedures were followed at the administrative level.

Here, the only difference is that petitioners did not question title of the property in possession of respondent, but conceded that title was in the United States.

However, there is a total absence here as in Murray of any showing of interference with or obstruction of the Government, its property, its agencies, or instrumentalities.

Such conflict results from a pyramiding of erroneous concepts, the first of which appears in the sole dissent by Frankfurter, J., on June 9, 1958, on denial by this Court of petitions of the Murray Corporation and the United States for rehearing, 357 U.S. 913.

His dissent demonstrates a self-chosen construction of Michigan's tax laws and a disregard for prior construction thereof by the highest court of this State.

Petitioners urged below in their brief in the State court:

> "The majority opinion in Murray did not see fit to analyze the underlying authority for the assessment and tax involved. It was sufficient for the majority to conclude that the tax did not infringe on the federal government's implied immunity from state taxation. In so doing they avoided construing Michigan's tax law and Detroit's Charter but instead they accepted our own Supreme Court's decision saying (p. 493 U.S., *supra*):
>
> "'It is not disputed that Michigan law authorizes the taxation of the party in possession under

such circumstances. Cf. Detroit Shipbuilding Co. v. Detroit, 228 Mich. 145, 199 N.W. 645; Detroit v. Gray, 314 Mich. 516, 22 N.W. 2nd 771."

"* * * All of the Justices with the exception of Mr. Justice Frankfurter declined to consider the Government's arguments for rehearing. From a reading of his lone dissent anyone who had read the several opinions in Allegheny as well as those in Murray would conclude that he was goading the majority to specifically reverse its former opinion in Allegheny."[1]

The misconstruction of said dissent was adopted without question by the writer of opinion in a Michigan case decided subsequent to Murray on December 28, 1961, in Continental Motors Corporation v. Twp. of Muskegon, 112 N.W. 2d 429, a copy of which due to its length appended to Appendix for Appellants (Rule 23, (iii) i). At p. 198, he stated:

"The scheme of assessment and collection of taxes disclosed by the foregoing is consonant only with an ad valorem tax on the ownership of property (*City of Detroit v. Phillip, supra*, and *Piquard v. Auditor General, supra*), the possessor being assessed only as a collection agent for the taxing authority with the statutorily granted right to reimbursement from the owner whose primary duty it is to pay the tax (*Crawford v. Koch, supra*). See Mr. Justice Frankfurter's opinion dissenting from the supreme court's denial of rehearing in the Murray Case at 357 U.S. 913 (78 S. Ct. 1145, 2 L. ed 2d 1164)."

Compounding this erroneous construction, the Trial Court in the present case (App. 76a-77a) stated:

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[1] United States v. Allegheny, 322 U.S. 174, 197-8.

> "The words of Mr. Justice Frankfurter in his dissent filed in connection with petition for rehearing in Murray seems to be most appropriate in the instant case."

Following his quoting from said dissent, the Trial Judge summarily said:

> "Murray has been overruled, Continental Motors v. Muskegon Township, 365 Mich. 191, 195:"

and concluded (App. 78a):

> "Continental controls at this writing.[1] * * *"

This was followed by opinion of Deghmers, J., on the appeal of the instant case when he stated at p. 109-110 of 126 N.W. 2d:

> "The trial court's decision was planted on our holding in Continental Motors Corporation v. Twp. of Muskegon, 365 Mich. 191, that * * * Michigan's general property tax act did not authorize taxation of possessory interests held by individuals in personal property owned by the United States.
>
> "Defendants stress what they term distinctions on the facts between this case and Continental. These may be pertinent to other objections raised by plaintiff to the tax. They are not so as to the controlling point in Continental, also raised by plaintiff here, that no statutory (here also charter) authority existed for collection of the 1959 tax in question.
>
> "Defendant's discussions of where the legal incidence, as distinguished from economic burden of the

[1] This is out of step with recent Michigan decisions which held that prevailing opinions of United States Supreme Court are controlling. People v. Lechner, 11 N.W. 2d 918; and Scholle v. Secretary of State, 104 N.W. 2d 63.

tax falls, and whether it represents an assessment in personam or in rem, while of possible value in a consideration of the question of implied Constitutional immunity from State taxation of the Federal government, its agencies and property, are not decisive of the applicability of Continental. * * *"

2. Clarification Required for Better Understanding

Following the divided opinions (four in all) in Murray, many words have been written which becloud the area of inter-Federal-State relationships. The reaction of the Government was indicated by filing of its petition for rehearing of a majority opinion of this Court for the first time in nine years. (Denied, 357 U.S. 913.)

A number of decisions in state and federal courts have cited Murray. The reaction of most opinions has been one of reluctant acceptance but in practice, a rejection as if some new and startling development had come about.[4] Authors of a great number of Bar Journal and Law Review articles have also adhered to views of the dissenting opinions.[5]

There is need for clarification of the Court's decision expressed in the majority opinion written by Black, J., and joined in by Mr. Chief Justice Warren; Clark, Douglas; and Brennan, JJ. The opinion presently being appealed is an indication of need to make subordinate courts better aware that it is not enough merely to determine that federally owned property has been made the subject of a state ad valorem tax. It must also be ascertained whether

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[4] Notably, General Dynamics Corp. v. Los Angeles County, 330 P. 2d 794; Martin Co. v. State Tax Comm. of Maryland, 171 A. 2d 479.

[5] Exceptions are George Washington Law Review, Vol. 26, Fall Quarter, p. 741; University of Detroit Law Journal, Feb. 1959, p. 323.

federally owned property has been made the object of the tax, i.e., whether the United States, its agencies, instrumentalities, or property are held accountable for the tax.

As indicated by reference to Detroit Shipbuilding Co. v. Detroit and City of Detroit v. Murray interpreting the pertinent charter provisions, the opinion in General Motors held the tax was improperly assessed only because property in its possession title to which was in the United States was included in the assessment (p. 237 of 126 NW 2d). Thus while leaving those cases standing as authority for the validity of imposing a personal property tax based on an assessment against a person in possession, the opinion in General Motors arrived at an erroneous conclusion by misconstruing the opinion of this Court in Murray. It is submitted that the latter decision is not authority for cloaking General Motors, a private contractor, with governmental immunity when the assessment is made against the contractor and it alone is accountable for payment of the tax.

As this Court said in Murray, at p. 495, *supra*:

> "We find nothing in the Constitution which compels us to strike down these state taxes. There was no discrimination against the Federal Government, its property or those with whom it does business. There was no crippling obstruction of any of the Government's functions, no sinister effort to hamstring its power, not even the slightest interference with its property. Cf. *M'Culloch v. Maryland*, 4 Wheat. 316."

The majority opinion in Murray was in this respect not revolutionary. If it appeared to upset earlier decisions, it did so by revitalizing the earliest ground rules for balancing respective rights of the Government and the States, laid down by Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheat. 316, 436.

Where a similar state tax involving real property leased from the United States was upheld (Rummel v. Musgrave, 350 P. 2d 825), this Court on October 17, 1960, granted a motion to dismiss for want of a substantial Federal question, 364 U.S. 293. This was in accord with Murray whereas the instant cases are opposite.

The Supreme Court of Michigan admittedly did not use the yardstick of legal incidence as distinguished from economic burden and did not consider whether the tax involved was based on an assessment in personam or in rem (See page 2 of Opinion appended hereto). Thus, it leaves unanswered a constitutional question for this Court to determine, namely, whether the taxes here involved violated the immunity of the Federal Government.

Because these matters are likely to remain in dispute until settled by this Court, a determination would be of valuable assistance to the bar, to industry, to the Federal, and to State governmental units.

3. Effect on United States and Local Communities

The sums involved are unusually large but that is not as important as the need for resolving contests presented in courts of the several States where government procurement contracts are in effect with local manufacturers. A large part of defense appropriations in the national budget is likely to be spent with such contractors. In those States where no personal property taxation exists but some form or forms of privilege or specific taxes are usually substituted, the latter types have been held valid by this Court when the responsibility for their payment is directly on the contractor and not on the government. (Anno. State Taxes on Federal Contractors, 2 L. Ed. 2nd 1789).

The decision of this Court in Murray held valid a non-discriminatory personal property tax against the contractor based on an assessment (valuation) of government property placed on a line of the assessment roll naming the contractor as taxpayer with the notation "assessed subject to prior rights of Federal Government."

Settlement of the question whether the decision below of Michigan's Supreme Court is in conflict with this Court's disposition of Murray is plainly in the national public interest.

4. Pending Litigation in Which Petitioners are Involved

Although Murray was decided as far back as March 3, 1958, at this writing only a few of the pending cases in the Wayne Circuit Court and in the United States District Court for the Eastern District of Michigan have been dismissed. There remain thirty (30) long standing cases pending for the years 1952-1958 and approximately twenty-five (25) cases commenced in 1959 and 1960 in Wayne County Circuit Court against petitioners herein in which a common issue of implied constitutional immunity is involved and requires disposition.

The amount of taxes at stake is upwards of four-million dollars which is of considerable importance to the city, school and county represented herein by petitioners.

Great injustice and hardship may befall said units should matters remain as they now stand with the crucial constitutional immunity issue left unanswered by the decision below in General Motors.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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a Michigan municipal corporation,
Petitioner,

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April 24, 1964.

APPENDIX A

STATUTES, LOCAL ACTS AND CHARTER PROVISIONS

Compiled Laws of Michigan 1948, 211.1 (7.1 MSA)

"Property subject to taxation. . Section 1. *The People of the State of Michigan enact* That all property, real and Personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation."

Compiled Laws of Michigan 1948, 211.53 (7.97 MSA)

"Any person may pay the taxes or special assessments, or any 1 of the several taxes or special assessments, on any parcel or description of land, or on any undivided share thereof, and the treasurer shall note across the face of the receipt in ink any portion of the taxes or special assessments remaining unpaid. He may pay any tax or special assessment, whether levied on personal or real property, under protest, to the treasurer, specifying at the time, in writing, signed by him, the grounds of such protest, and such treasurer shall minute the fact of such protest on the tax roll and in the receipt given. The person paying under such protest may, within 30 days and not afterwards, sue the township for the amount paid, and recover, if the tax or special assessment is shown to be illegal for the reason shown in such protest . . ."

Section 7, Title VI, Chapter 2, Charter of City of Detroit 1918 (1952 Ed.)

"After the assessment rolls shall have been fully and finally confirmed, it shall, as herein provided, be the duty of the board of assessors to cause the amount of all taxes, in dollars and cents, authorized to be assessed, and collected in each year, to be ratably assessed to each person named or lots described, upon and according to the aggregate valuation which such person or lots shall have been assessed in said assessment rolls. Such ratable assessments hall be entered in a book prepared for that purpose to be known as the tax roll for each district, in a column showing the amount of city taxes assessed to each person or lot in each year. Such tax rolls shall contain columns for the names and addresses of all persons assessed hereunder. When said tax rolls shall have been completed, the board shall deliver the same to the controller, who shall cause the same to be delivered to the city treasurer on the first day of July, take his receipt therefor and charge him therewith. All city taxes shall become a debt against the owner from the time of the listing of property for assessment by the board of assessors."

Section 1, Chapter IV, Title VI, Charter of City of Detroit, 1918 (1952 Ed.)

"* * * The owners or persons in possession of any personal property shall pay all taxes assessed thereon."

Section 26, Chapter IV, Title VI, City Charter, 1918 (1952 Ed.)

"On and after the 26th day of August in each year and at any time until the taxes mentioned herein are paid, the City Treasurer shall enforce the collection of all unpaid taxes which are assessed against the property or value

other than real estate. If such taxes shall remain unpaid the City Treasurer shall forthwith levy upon and sell at public auction the personal property of any person refusing or neglecting to pay such tax, or collect the same through the courts. Six days' notice of any such sale shall be given by the City Treasurer by publication in the official newspaper. Whenever such sale shall have been made the proceeds thereof shall be applied to the payment of the taxes and percentage and the expense of such sale, and any surplus remaining thereafter shall be paid over to the owner of such property or other person entitled to receive the same. The City Treasurer shall have power in the name of the City to prosecute any person or corporation refusing or neglecting to pay such taxes or any special assessment by a suit in the Circuit Court for the County of Wayne, and he shall have, use and take all lawful ways and means provided by law for the collection of debts to enforce the payment of any such tax or any special assessment. The tax rolls or unit cards after the tax has been transferred thereto shall be prima facie evidence of the indebtedness of such person and the regularity of the proceedings by which such tax or assessment was assessed and levied. All city taxes upon personal property shall become on said fifteenth day of July a lien thereon and so remain until paid and no transfer of the personal property assessed shall operate to divest or destroy such lien."

Act 6, Local Acts of 1943.

"AN ACT to amend sections 1, 2, 3, 4, and 5 of Act No. 378 of the Local Acts of 1879, entitled "An act to provide for the collection of state and county taxes in the City of Detroit, repealing Acts No. 241 of the session laws of 1863 and No. 88 of the session laws of 1865, amendatory thereto," as amended, and to add to said act 2 new

sections to stand as sections 8 and 9 thereof; and to repeal all acts and parts of acts in anywise contravening any of the provisions of this act; and to provide for a referendum thereon.

The People of the State of Michigan enact:

Sections amended and added.

SECTION 1. Sections 1, 2, 3, 4 and 5 of Act No. 378 of the Local acts of 1879, as amended, are hereby amended, and 2 new sections are hereby added to said act to stand as sections 8 and 9 thereof, said amended and added sections to read as follows:

SEC. 1. That hereafter when the assessment rolls of the different wards in the City of Detroit, for city taxes, are annually, fully and finally confirmed, as prescribed by the provisions of the city charter, it shall be the duty of the board of assessors of said city to make a copy of the assessment roll of each of said wards, to be known as the state and county tax rolls, upon which said board of assessors shall, upon receipt of the certificate of the clerk of the board of supervisors of said county, stating the amount of taxes apportioned to each ward, ratably assess the state and county taxes, as provided by the general laws of the state, to each of which tax rolls said board of assessors shall annex a warrant signed by the members thereof directed to the county treasurer commanding him to collect from the persons liable therefor the several sums listed therein as taxes, and which tax rolls and warrants the said board of assessors shall deliver over to the treasurer of said county on or before the tenth day of November in each year.

Sec. 2. The county treasurer, upon the receipt of said rolls, shall cause a notice to be published in 3 daily papers published in said city, stating that said rolls and warrants have been made and deposited in his office by the said board of assessors, and giving the time and manner of payment of such taxes and the penalties prescribed for the non-payment thereof. The treasurer shall also mail, to each taxpayer at his last known address on said tax rolls, a statement showing the description of the property against which the tax is levied and the amount of the tax thereon. Failure to publish said notice or send or receive such notice shall not in any way prejudice the right to collect or enforce payment of any tax. The county treasurer shall, beginning December first of each year, proceed to collect such taxes. He shall receive taxes and issue receipt therefor without interest, charges or penalty on all sums voluntarily paid on or before the fifteenth day of January of the succeeding year; upon all taxes paid after said fifteenth day of January, he shall add a collection fee of 4 per cent. From and after the first day of March next after said assessment, said taxes shall be considered delinquent within the meaning of the general tax statutes, and the county treasurer shall, in addition to said collection fee of 4 per cent, add and collect interest on said tax computed at the rate provided by the general tax laws for the collection of delinquent property taxes."

Act 6, Local Acts of 1951

"An Act to amend section 2 of Act No. 378 of the Local Acts of 1879, entitled 'An act to provide for the collection of state and county taxes in the city of Detroit, repealing Acts No. 241 of the Session Laws of 1863 and

No. 88 of the Session Laws of 1965, amendatory thereto, as amended by Act No. 6 of the Local Acts of 1943; and to provide a referendum thereon.

The People of the State of Michigan enact:

Section amended.

SECTION 1. Section 2 of Act No. 378 of the Local Acts of 1879, as amended by Act No. 6 of the Local Acts of 1943, is hereby amended to read as follows:

SEC. 2. The county treasurer, upon the receipt of said rolls, shall cause a notice to be published in 3 daily papers published in said city, stating that said rolls and warrants have been made and deposited in his office by the said board of assessors, and giving the time and manner of payment of such taxes and the penalties prescribed for the non-payment thereof. The treasurer shall also mail, to each taxpayer at his last known address on said tax rolls, a statement showing the description of the property against which the tax is levied and the amount of the tax thereon. Failure to publish said notice or send or receive such notice shall not in any way prejudice the right to collect or enforce payment of any tax. The county treasurer shall, beginning December first of each year, proceed to collect such taxes. He shall receive taxes and issue receipt therefor without interest, charges or penalty on all sums voluntarily paid on or before the 15th day of January of the succeeding year; upon all taxes paid after said 15th day of January, he shall add a collection fee of 4 per cent: Provided, That when the 15th day of January shall fall on a Sunday or holiday, such taxes may be paid to the county treasurer on the next succeeding business day without the addition of any

interest, charges or other penalties. From and after the 1st day of March next after said assessment, said taxes shall be considered delinquent within the meaning of the general tax statutes, and the county treasurer shall, in addition to said collection fee of 4 per cent, add and collect interest on said tax computed at the rate provided by the general tax laws for the collection of delinquent property taxes.".

APPENDIX B

(Attached Decision of Michigan Supreme Court.)

OCTOBER TERM 1963

STATE OF MICHIGAN

SUPREME COURT

121 122

FILED FEB 3 1964

GENERAL MOTORS CORPORATION, a Delaware corporation,

Plaintiff and Appellee

v.

CITY OF DETROIT, a municipal corporation of the State of Michigan, and CHARLES N. WILLIAMS, its Treasurer,

Defendants and Appellants

GENERAL MOTORS CORPORATION, a Delaware corporation,

Plaintiff and Appellee

v.

COUNTY OF WAYNE, a county of the State of Michigan, and HAROLD E. STOLL, its Treasurer,

Defendants and Appellants

Justice Adams took no part in this decision

BEFORE THE ENTIRE BENCH, EXCEPT SOURIS AND SMITH, JJ.

DETHMERS, J.

Plaintiff sued to recover 1959 personal property taxes paid defendants under protest. From summary judgments against them, defendants appeal.

The personal property involved consisted of machinery and

Delaware corporation,

Plaintiff and Appellee

v.

COUNTY OF WAYNE, a county of the State of Michigan, and HAROLD E. STOLL, its Treasurer,

Defendants and Appellants

Justice Adams took no part in this decision

BEFORE THE ENTIRE BENCH, EXCEPT SOURIS AND SMITH, JJ.

DETHMERS, J.

Plaintiff sued to recover 1959 personal property taxes paid defendants under protest. From summary judgments against them, defendants appeal.

The personal property involved consisted of machinery and equipment owned by the United States, located in plaintiff's plants in Detroit and used by it, as a defense contractor, in making goods for the United States under contracts between them.

The trial court's decision was planted on our holding in Continental Motors Corporation v. Township of Muskegon, 365 Mich 191, that prior to the amendment contained in PA 1959, No 266*

This amendment provides: " * * personal property not otherwise taxed under this act which is in the possession of any person, firm or corporation using same in connection with a business conducted for profit shall be deemed the property of such person for taxation and assessed to him accordingly."

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CORPORATION COUNSEL
LEGAL DIVISION

(not applicable to 1959 taxes), Michigan's general property tax act* did not authorize taxation of possessory interests held by individuals in personal property owned by the United States.

Defendants stress what they term distinctions on the facts between this case and Continental. These may be pertinent to other objections raised by plaintiff to the tax. They are not so as to the controlling point in Continental, also raised by plaintiff here, that no statutory (here also charter) authority existed for collection of the 1959 tax in question.

Defendants' discussions of where the legal incidence, as distinguished from economic burden, of the tax falls, and whether it represents an assessment in personam or in rem, while of possible value in a consideration of the question of implied constitutional immunity from State taxation of the Federal government, its agencies and property, are not decisive of the applicability of Continental. Michigan Constitution 1908, art 10, § 3, provides for a personal property tax to "be levied on such property" and that it shall be "taxation for such property" and "taxation on such property." The mentioned general property tax act implements this by providing "that all property, real and personal * * * shall be subject to taxation." In Continental this Court said that our law authorized an ad valorem tax "on the personal property itself." The city charter of Detroit, title VI, ch 2, § 1, provides for "taxes upon personal property." The charter does not and could not confer

charter) authority existed for collection of the 1959 tax in question.

Defendants' discussions of wnere the legal incidence, as distinguished from economic burden, of the tax falls, and whether it represents an assessment in personam or in rem, while of possible value in a consideration of the question of implied constitutional immunity from State taxation of the Federal government, its agencies and property, are not decisive of the applicability of Continental. Michigan Constitution 1908, art 10, § 3, provides for a personal property tax to "be levied on such property" and that it shall be "taxation for such property" and "taxation on such property." The mentioned general property tax act implements this by providing "that all property, real and personal * * * shall be subject to taxation." In Continental this Court said that our law authorized an ad valorem tax "on the personal property itself." The city charter of Detroit, title VI, ch 2, § 1, provides for "taxes upon personal property." The charter does not and could not confer taxing powers beyond those authorized by Constitution and statute. Clearly, the tax is on the property.

Defendants say Continental is not controlling because there are distinctions between the governing law involved here and in Continental. These are said to consist of the following, namely, (1) that this assessment is made under a Detroit charter provision that "persons in possession of any personal property shall pay all taxes assessed thereon"** while the assessment made by a township in Continental was made under

*CL 1948, § 211. 1 et seq. as last amended by PA 1958, No 209 (Stat Ann 1957 Cum Supp § 7. 1 et seq.).

**Title VI, Ch 4, § 1.

the State's general property tax law which did not contain a comparable provision, and (2) that the tax here is not, as was considered in Continental, a tax on possessory or other limited interests in personal property separate and distinct from the property itself, but is actually a tax on the whole interest in the personal property, made, by ordinance, payable by the person in possession.

The holding in Continental may not thus be escaped. This Court held therein that as of 1959 " * * * our law authorized only an ad valorem tax on the personal property itself without providing for taxation of possessory interests * * *". If the tax is on a possessory interest, it is invalid under Continental.

On the other hand, if, as defendants urge, the tax is on the entire interest in the personal property, it is a tax on personal property of the United States, which is immune therefrom. See City of Detroit v. Murray Corporation, 355 US 489 (78 S Ct 458, 486; 28 L ed2d 441, 460), and cases therein cited beginning with McCulloch v. Maryland, 17 US 316, 376 (4 Wheat.) (4 L ed 579), and including such as United States v. Allegheny County, 322 US 174 (64 S Ct 908; 88 L ed 1209).

Either way the tax was improperly assessed. Cases such as Detroit Shipbuilding Co. v. City of Detroit, 228 Mich 145, and City of Detroit v. Gray, 314 Mich 516, interpreting the charter provision here pressed by defendants, are of no help to them because those cases involved personal property owned by one person and in the possession of another, not, as here, property of the United States immune from taxation.

under Continental.

On the other hand, if, as defendants urge, the tax is on the entire interest in the personal property, it is a tax on personal property of the United States, which is immune therefrom. See City of Detroit v. Murray Corporation, 355 US 489 (78 S Ct 458, 486; 28 L ed2d 441, 460), and cases therein cited beginning with McCulloch v. Maryland, 17 US 316, 376 (4 Wheat.) (4 L ed 579), and including such as United States v. Allegheny County, 322 US 174 (64 S Ct 908; 88 L ed 1209).

Either way the tax was improperly assessed. Cases such as Detroit Shipbuilding Co. v. City of Detroit, 228 Mich 145, and City of Detroit v. Gray, 314 Mich 516, interpreting the charter provision here pressed by defendants, are of no help to them because those cases involved personal property owned by one person and in the possession of another, not, as here, property of the United States immune from taxation.

As noted in Continental, the 1959 statutory amendment, applicable to 1961 and subsequent taxes, provides, with respect to facts like those in the instant case, that the property shall be deemed to be the property of the user (here the plaintiff) for taxation. Under City of Detroit v. Murray Corporation, supra, the imposition of the tax thereunder would encounter no Federal constitutional barrier because the Court said that

it would amount to a tax on the user's possessory interest, not on United States property. Detroit's charter provision does not, in terms, undertake to tax the user's possessory interest, as does the 1959 statutory amendment, but, instead, imposes the tax on the property and makes it chargeable against the possessor.

Defendants say this case should not have been decided on a motion for summary judgment because the pleadings and their affidavit of merits gave rise to issues of fact. However, despite the existence of disputes of fact, when resolving all of them in favor of defendants would not avail to preclude a verdict for plaintiff, then plaintiff's motion for summary judgment, under Court Rule No 30 (1945), then in effect, should be granted. Whittenberg v. Carnegie, 328 Mich 125.

Affirmed. No costs, a public question being involved.

Office Supreme Court, U.S.
FILED
MAY 27 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

No. 1050

CITY OF DETROIT,
a Michigan Municipal Corporation,
and
COUNTY OF WAYNE,
a Michigan Constitutional Body Corporate,
Petitioners and Appellants,
vs.
GENERAL MOTORS CORPORATION,
a Delaware Corporation,
Respondent and Appellee

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN

BRIEF FOR RESPONDENT IN OPPOSITION

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May 20, 1964

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CITATIONS

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Supreme Court of Michigan, the State Court of last resort, appears at 372 Mich. 234 and at 126 N.W. 2d 108. The opinion of the trial court (Wayne County, Michigan Circuit Court) appears in the Appendix of

Appellants separately filed by Petitioners, commencing at page 74a.[1]

JURISDICTION

The statutory jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

Respondent cannot accept the recitation of Questions Presented for Review, five in number, set forth on page 3 of the Petition. The reasons follow.

First, the questions posed by Petitioners were not really the questions considered below, were not questions upon which decision below was based, and were and are not necessary for decision.

Second, the questions are inaccurately stated and contain assumptions that are incorrect. For example, the recitation is made that the taxes at issue are "non discriminatory".[2] For further example, Question 4 assumes that State law authorized the assessment made; the holding of the Supreme Court of Michigan is exactly to the contrary.

What is obvious is that the Supreme Court of Michigan never reached any of the questions recited by Petitioners.

---

[1] Page references followed by the letter "a" are to this separately bound "Appendix of Appellants" used in the Court below. Petitioners have filed nine copies of such document pursuant to section 4 of Rule 21. Page references followed by the letters "Ax" are to Appendix A attached to the Petition, and those followed by the letters "Bx" are to the Appendix to this Brief in Opposition.

[2] Whether the taxes at issue did discriminate against the United States and Respondent was one of the issues initially presented. (Second Amended Declaration, paragraphs 9, 9(A) and (M), 11a-13a; cf. *Phillips Chemical Company v. Dumas Independent School District*, 361 U.S. 376 (1960).) However, neither the trial court or the Supreme Court of Michigan found it necessary to decide that issue because each determined that the taxes were not authorized by state law.

The question actually considered by the *Supreme Court of Michigan* and upon which decision turned was this:

1. Did the *statutes of Michigan* and *Charter of Detroit*, in the year 1959, authorize Petitioners, purely as a matter of state law, to impose and collect taxes from Respondent because Respondent was in possession of United States-owned personal property?

The real question which Petitioners seek to have reviewed *by this Court* is this:

2. Where Michigan's court of last resort has definitively declared that the law of Michigan does not authorize assessment and taxation of limited interests in personal property owned by the United States to the possessor thereof, does this Court's prior decision in *City of Detroit v. Murray Corporation*, 355 U.S. 489 (1958) *require* that such taxes be imposed and collected despite the absence of authority in state law for such method of taxation?

CONSTITUTION, STATUTES AND CHARTER PROVISIONS INVOLVED

Constitutional, statutory and charter provisions related to the issues are too lengthy to set forth here. Except as noted below, they are set forth in pertinent full text in the Appendix annexed to this Brief, and their citations are:

Constitution of Michigan, 1908, Article X, Sections 3, 4, 7 and 21

Act 206, Public Acts of Michigan of 1893 (General Property Tax Act), Compiled Laws of Michigan, 1948, as amended, Sections 211.1 *et seq.*

Section 211.24, Ibid.

Section 211.40, Ibid.

Section 211.47, Ibid.

Section 211.53, Ibid. (printed at page 1aa of Appendix A to Petition)

Act 266, Public Acts of Michigan of 1959, Compiled Laws of Michigan, 1948, as amended, Section 211.14.

Charter of the City of Detroit, 1918, as amended.
- Title VI
- Chapter II
  - Section 1
  - Section 5
  - Section 7 (printed at p. 2aa of Appendix A to Petition)
- Chapter IV
  - Section 1
  - Section 26 (printed at pp. 2aa-3aa of Appendix A to Petition and in part to p. 6bb, *infra*)
  - Section 27.

STATEMENT

These two cases were instituted on February 4, 1960 by Respondent General Motors Corporation against Petitioners City of Detroit and County of Wayne, and their respective treasurers, to recover $100,396.70 City of Detroit and School District of the City of Detroit taxes and $16,065.61 County of Wayne taxes, both paid by Respondent in January, 1960 and both arising from an assessment made for the 1959 tax year against Respondent in the amount of $2,354,630 (75a).

The reason and basis for the assessment made against Respondent was the presence in Respondent's Cadillac

Motor Car Division Plant in the City of Detroit of certain machinery owned by the United States. Such machinery had been in such Plant from the year 1952 through the year 1959, but no assessment or taxation with respect thereto had ever been attempted by Petitioners prior to the year 1959 (47a).

However, in the year 1959, two events of some significance to this case occurred elsewhere in Michigan. First, the Township of Muskegon, in the County of Muskegon made an assessement against Continental Motors Corporation of the same nature and for the same reason as the assessment in the instant case. Second, the Michigan Legislature enacted Act 266 of the Public Acts of 1959. This statute amended Section 14 of the General Property Tax Act (Compiled Laws of Michigan, 1948, Section 211.14) to provide that "personal property not otherwise taxed under this act which is in the possession of any person, firm or corporation using same in connection with a business conducted for profit shall be deemed the property of such person for taxation and assessed to him accordingly."

This statute for the first time conferred express statutory authority upon local taxing units to make the type of assessment and collect the type of tax at issue here. The statute did not become effective, however, *until the tax year 1961.*[2] As noted, the City of Detroit and the Township of Muskegon did not wait for the effective date of this statute but attempted to make assessment of the type contemplated thereby without express statutory authority.

---

[2] Pursuant to Michigan constitutional provision, statutes become effective 90 days following adjournment of the Legislature, unless the Legislature gives them immediate effect which it did not do with respect to Act 266. (Constitution of Michigan, 1908, Art. V, Sec. 26.) Such 90 day period for the 1959 Legislature expired March 19, 1960. Taxable status of persons and property is determined on December 31 of each year for the following year. (Compiled Laws of Michigan, 1948, Section 211.2.) Thus, the first tax year controlled by the statute was 1961. The instant case involves the tax year 1959 *only* and thus presents no issue of continuing significance. (Argument, Section III, *infra*, p. 23.)

The State of Michigan had in 1959 and still has by virtue of its Constitution and its General Property Tax Act, a unified, state-wide assessment system for the assessment of real and personal property and the collection of taxes thereon. The property assessed in this case consisted principally of 675 large machines in the Plant of Respondent pursuant to certain facilities contracts between Respondent and the United States (37a-39a, 44a). Such machinery was used exclusively in the manufacture of goods for the defense establishment of the United States, particularly transmissions for tracked vehicles. It was clear, and was so stipulated, that title to all the machinery was in the United States. In fact, a substantial part of such machinery had simply been transferred from Government storage to Respondent's Plant (38a, 39a).

The machinery was assessed to Respondent on the assessment and tax rolls "as the person in possession subject to prior rights of the Federal Government" (50a). Throughout the period of assessment and the litigation, Petitioners made no effort to assess or tax the *United States*, or to impose the tax on the *personal property itself*, consistently contending that, as a sort of abstraction, Respondent had an assessable interest wholly divorced from the property itself. [Cf. Brief of Petitioners (Appellants) in the Supreme Court of Michigan, pp. 28 through 42. Certain portions of such Brief are quoted below to illustrate the theory and nature of the tax levied by Petitioners and challenged by Respondent:

> "* * * In this case such taxes were levied and imposed upon appellee [Respondent General Motors], the corporation in possession of the property (50a). It is a levy based upon an assessment *in personam* and not *in rem*. * * *" (p. 32)

> * * * This confirms our conclusion that the form and substance of our personal property tax is essentially a form of personal taxation, using the property only as a basis according to value for such taxation. * * * (p. 36)
>
> "In the case of personal property taxes, this levy or charge can only be made to the person named in the assessment roll as there is no provision in Section 7 for such levy or charge to be made against the personal property" (p. 37).[1]

This method of assessment—this disembodied tax that Petitioners sought to impose—was so foreign to the provisions and workings of the Michigan tax system that Respondent paid the taxes under protest and instituted separate actions against each collector (i.e. Petitioner City of Detroit and Petitioner County of Wayne) to recover the taxes so paid. The first and chief contention of Respondent was that the Michigan tax statutes, the Charter of the City of Detroit, and the entire Michigan tax system contained absolutely no authority for the making of the assessment and the collection of taxes thereon. (Second Amended Declaration, paragraph 6(E), (F) and (H), 9a, 10a, 11a.)

Respondent also contended, however, that if statute and charter did authorize the assessment, the assessment and taxes were void for federal Constitutional reasons in that (i) the assessment and taxes would violate the implied immunity of the United States and those with whom it deals from state and local taxation and (ii) statute, charter and

---

[1] Petitioners were consistent throughout in their claim that they were not taxing property. It is an express assertion of their Consolidated Answer to Second Amended Declaration, paragraph 9, p. 27a.

administrative practice were such as to discriminate between the United States and those with whom it deals on the one hand and other tax-exempt entities and those with whom they deal on the other hand. (Second Amended Declaration, paragraphs 6(E), (K), (L) and (M), 9a, 11a-13a.)

The recitations on page 6 of the petition, under the heading "Federal Questions Raised Below" all refer to these constitutional issues presented by Respondent and do not refer to the statutory, and therefore non-federal, issue of *authority under Michigan law*.

In its pre-trial summary, the trial court noted that there were four agreed issues presented. Those four issues were stated as follows: (59a and 60a)

"Issues:

"Is this assessment made in 1959 by the City of Detroit against General Motors Corporation in the amount of $2,354,630 authorized by any statute, charter provision or ordinance?

"Are such assessments to General Motors Corporation and taxes levied thereon invalid, unconstitutional and improper because such assessment is at the full assessable value of the property ('machinery') in question?

"Do provisions of the Michigan statutes and the charter and ordinances of Detroit unconstitutionally discriminate against the United States and those with whom it deals by subjecting General Motors Corporation to this assessment and taxes levied thereon if actually such statutes, charter and ordinances grant exemption from assessment and taxation to persons in a like situation with respect to property owned by the State of Michigan and its political subdivisions and subordinate units of government?

"Did administrative practices within the City of Detroit in 1959 unconstitutionally discriminate against the United States and those with them it deals by subjecting General Motors Corporation to this assessment and taxes levied thereon if in fact the City of Detroit in that year granted exemptions from assessment and taxation to persons in a like situation with respect to property owned by the State of Michigan and its political subdivisions and subordinate units of government?"

Under Michigan practice the pre-trial summary "controls the subsequent course of the action unless modified at the trial before trial to prevent manifest injustice." [Michigan Court Rule 35, Section 4 (1945).] The pre-trial statement was never modified in this case.

In the meanwhile, litigation relating to authority under the Michigan taxing statutes then in effect to impose the 1959 assessment made by the Township of Muskegon against Continental Motors Corporation had reached the Supreme Court of Michigan in an action entitled *Continental Motors Corporation v. Township of Muskegon*, 365 Mich. 191, 112 N.W. 2d 429. On December 28, 1961, the Supreme Court of Michigan determined that the Michigan General Property Tax Act did not authorize the peculiar assessment made against the Government contractor in that case, which was identical to the assessment made against Respondent. A copy of such opinion has been furnished to this Court by Petitioners as a part of their separately filed Appendix for Appellants.

Following the decision in *Continental*, Respondent here moved for summary judgment (63a) on the sole ground that by virtue of the *Continental* decision there was no authority to make the assessment or impose the taxes.

After this Motion was briefed and argued, but before it was decided, the cases reached the trial docket and the trial court then permitted them to be tried. Following the trial, the trial court, which had reserved decision on the Motion for Summary Judgment, granted such Motion. This decision, based as it was on *Continental*, solely related to the absence of statute or charter *authority* to impose the taxes.

Petitioners then appealed to the Supreme Court of Michigan. The matters presented to that Court may be understood from the "Conclusion" of the Brief filed by Petitioners City of Detroit and County of Wayne in the Supreme Court of Michigan, from which we quote (Pages 66 and 67):

"CONCLUSION

"Summarizing, we respectfully suggest to the Court that there are two fundamental underlying questions which should be considered because if either is answer in favor of appellants [Petitioners City and County] then this Court must set aside the Summary Judgments entered below.

"The first and primary issue involved is the authority of the City of Detroit and County of Wayne to make an assessment and levy the tax here in question against appellee [Respondent General Motors]. We have shown that the provisions of the Charter of the City of Detroit authorizes the imposition of a tax against one in possession of personal property. Thus, these cases are distinguished from Continental where this Court held that the township of Muskegon was unable to point to any specific authority for the same kind of tax under the General Property Tax Act.

"The second issue is whether the factual situation as it existed in Continental is so different from the factual situation in these cases as to justify the conclusion that Continental is not controlling. * * *

> "We submit that the proposition whether General Motors, an independent contractor, is entitled to ride piggyback on the implied constitutional tax immunity of the Federal Government is not involved in this matter. That is a Federal question which has been answered in favor of Appellants by the United States Supreme Court in Murray. Any injection of this as an issue in this case begs the question of *authority*. * * *" (Emphasis in original.)

Most specifically, what was at issue in the Supreme Court of Michigan was the narrow question whether the Charter of the City of Detroit gave these Petitioners, as a matter of state law, authority to impose the peculiar type of tax here sought to be imposed, which the Township of Muskegon did not have since its powers were drawn solely from the General Property Tax Act and it had no charter. The Supreme Court of Michigan, in the instant case, held that no such authority existed for these Petitioners, just as it had earlier held for the Township of Muskegon.

The Opinion of the Supreme Court of Michigan in this case was filed February 3, 1964, and Petitioners then filed the instant Petition for Writ of Certiorari.

ARGUMENT

I.

THERE IS NO FEDERAL QUESTION OF SUBSTANCE

The foregoing Statement makes clear that the decision of the Supreme Court of Michigan was premised upon a holding that Michigan law did not authorize the assessment and taxes which Petitioners here sought to impose, as such law existed in 1959. The Supreme Court of Michigan, like the trial court, simply never reached the constitutional

questions, which would be presented only *if and after authority* in statute or charter to impose the tax had been found.

The Petitioners now seek to by-pass that issue of authority and in effect ask this Court to find such authority (and thus reach the constitutional issues) after the Court of last resort of Michigan has twice declared that no such authority exists. *The issue of authority is the real issue in this litigation and it is purely an issue of state law, finally decided adversely to Petitioners.*

As part of their attempt, Petitioners suggest (Petition, pp. 9-13) that the decision here is in conflict with the decision of this Court in *City of Detroit v. Murray Corporation*, 355 U.S. 489 (1958). No such conflict exists. *Murray* is concerned with the constitutional limits of a state's power to tax. This case is concerned with whether the State of Michigan, in 1959, invoked the full range of its power within such constitutional limits.

This distinction was noted by the Supreme Court of Michigan in both *Continental Motors Corporation v. Township of Muskegon*, 365 Mich. 191 (1961), and in this case. In each instance, the Supreme Court of Michigan observed that in the year 1959 (but first effective for the tax year 1961) the Legislature of Michigan had amended the General Property Tax Act by Act 266 of that year so as to confer the express authority to impose this type of taxation which had theretofore been lacking.

> As noted in *Continental*, the 1959 statutory amendment, applicable to 1961 and subsequent taxes, provides, with respect to facts like those in the instant case, that the property shall be deemed to be the property of the user (here the plaintiff) for taxation. Under *City of Detroit v. Murray Corporation, supra*, the imposition of the tax there-

under would encounter no Federal constitutional barrier because the Court said that it would amount to a tax on the user's possessory interest, not on United States property. Detroit's charter provision does not, in terms, undertake to tax the user's possessory interest, as does the 1959 statutory amendment, but, instead imposes the tax on the property and makes it chargeable against the possessor."

Opinion of Supreme Court of Michigan in this case, p. 239.

It is true that the end result of *Murray* and the end result of this case differ. The difference lies in the posture in which the taxing authorities come before this Court. In *Murray* this Court was confronted with a situation in which all representatives of the State of Michigan then before the Court assumed, declared and attempted to implement, state-given power to impose the tax. The question left for decision by this Court was thus solely whether that state power, so assumed, infringed the constitutional limits.

"* * * As applied—and of course that is the way they must be judged—the taxes involved here imposed a levy on a private party possessing government property which it was using or processing in the course of its own business. It is not disputed that Michigan law authorizes the taxation of the party in possession under such circumstances * * *."

"* * * Lawful possession of property is a valuable right when the possessor can use it for his own personal benefit."

"* * * Here, however, state law specifically authorizes assessment against the person in possession. And the taxing authorities were careful not to attempt to tax the Government's interest in the property."

> "We find nothing in the Constitution which compels us to strike down these state taxes."
>
> *Murray*, majority Opinion of Mr. Justice Black, pp. 493, 494, 495.

In the instant case, the taxing authorities (Petitioners) come into this Court with a definitive declaration by the Supreme Court of Michigan that its municipalities had, in 1958, no state-given power to impose the tax. "In other words there was no tax at all; it was a complete nullity; it could not be imposed." The question of constitutional immunity from tax accordingly never arises.

Petitioners next seek to suggest (Petition, pp. 13-15) that this Court's decision in *Murray* somehow requires "clarification." Three state Courts of last resort have had occasion to consider and apply the teaching of *Murray*. None of them has had any difficulty. (Michigan, in *Continental Motors Corporation v. Township of Muskegon* and in the instant case; Maryland, in *Martin Company et al. v. State Tax Commission of Maryland et al.*, 225 Md. 404, 171 A. 2d. 479 (1961); and California, in *General Dynamics Corporation v. Los Angeles County*, 51 Cal. 2d 59, 330 P. 2d 794 (1958).)

In Maryland, the Court considered in detail its own statutes, and the regulations of its own administrative agency, and concluded that as such statutes and regulations then existed, the State of Maryland had not chosen to authorize its tax collecting officers to impose a tax upon the possessor of United States-owned personal property.

The Court in Maryland reasoned:

> "The primary question in this case is the validity under Maryland tax laws of taxes assessed for the year 1958 against The Martin Company (Martin) on materials, work in process and finished products in Martin's possession under contracts with the

United States * * * the * * * assessments aggregated some $63,000,000. * * *"

(225 Md. at 407, 171 A. 2d at 480)

"On the basis of these decisions *[City of Detroit v. Murray Corporation* and its two Michigan companions decided the same day] and *American Motors Corp. v. City of Kenosha*, 356 U.S. 21, 78 S. Ct. 559, 2 L. Ed. 578 (affirming *per curiam* the decision of the Supreme Court of Wisconsin, reported in 274 Wis. 315, 80 NW 2d 363, on the authority of the Murray case), the power of a state and its political subdivisions to tax the interest of the possessor of Government-owned property seems clear. * * * The primary question before us, therefore, is not what this State can do, but what it has done."

(225 Md. at 415, 416, 171 A. 2d at 484, 485)

"We conclude that our tax laws applicable to the years in question did not provide for the taxation of Martin's right to use and possess personal property belonging to the United States. Our holding, we believe, is in accord with that of the Supreme Court of California with regard to similar tax statutes of that State involved in the General Dynamics case. * * *"

(225 Md. at 421, 171 A. 2d at 487, 488)

In California, the Court reached exactly the same result in *General Dynamics*; that is, that *Murray* definitively declares the constitutional principle that "a private contractor's right to use government property may be made the subject of a non-discriminatory tax measured by the value of the property used" (51 Cal. 2d at 62, 300 P. 2d at 796) but that California had not, as of that time, elected to impose such a tax.

[ ] The material in brackets is Respondent's explanatory note; it does not appear in the original. The same observation applies to the use of brackets wherever they appear in this Brief.

Murray plus these State court cases and the Michigan statute are completely instructive without difficulty or ambiguity. This Court has declared that constitutional power exists for the imposition of taxes upon Government contractors measured by the full value of Government property in the possession of such contractors. California, Maryland and Michigan have declared that as their law existed at the time of the cases considered, the state had not elected to invoke such constitutional power. The Legislature of Michigan has now chosen to do so.

This history is crystal clear and requires no clarification.

II.

THE DECISION BELOW IS CLEARLY CORRECT

The tax system created by the General Property Tax Act of Michigan is a complex, complete and unified system which applies equally to all municipalities and all taxpayers on a state-wide basis. This is evident from the statute and charter provisions set forth in the Appendix to this Brief.

The question of authority under Michigan law presented in *Continental* and by the instant case was therefore not an insignificant question for Michigan because the assessments there imposed were utterly foreign to the system as it then existed and such assessments were apparently made only by a few of the many assessing units in the State, principally Detroit.

By these two decisions, the Supreme Court of Michigan definitively declared that the abstraction sought by Petitioners (a personal property tax without property to be taxed) simply had no place in the structure as it then existed. It is to be remembered that throughout this litigation, Petitioners have never contended that they were in fact taxing property or taxing the owner of property;

rather they have contended they were taxing someone else "because of" property. This type of tax as to personal property was simply held not to exist in Michigan prior to the new statute in 1959.

This definitive determination was uniquely within the power and duty of the Supreme Court of Michigan to make, for it involved a construction of state statute and charter power of a municipal corporation of such state. *Alabama State Federation of Labor et al. v. McAdory, et al.*, 325 U.S. 450 (1945).

To be sure, there is a real federal constitutional principle which underlies this case, but it is one upon which all parties and all Courts have been of unanimous view. That principle is simply that a state does not have power to impose direct taxes upon the *property* of the United States itself. This is why Petitioners here did not attempt to do so and is a patently correct premise. The principle is clear from a long line of decisions of this Court, notable among which are *Van Brocklin et al. v. Tennessee et al.*, 117 U. S. 151 (1886); *United States v. Alabama*, 313 U. S. 274 (1941); *United States, et al., v. County of Allegheny*, 322 U. S. 174 (1944) and *City of Detroit v. Murray Corporation* itself.

These Petitioners have not sought to tax the property of the United States; that is not the tax at issue here.

The *nature* of the tax sought to be imposed was one upon a possessor because he was a possessor, a type of taxation for which Petitioners were required to create and did create, a new terminology, i.e., "personal taxation", and a type of taxation which simply did not exist in Michigan as to personal property prior to the 1959 amendment.

At every turn of the Michigan statute and Detroit charter, as appears from the statute and charter provisions set forth in the Appendix to this Brief, what was taxed in Michigan prior to 1959 as to personal property was the

property itself, which was made liable for collection of the tax by the lien device. What were not taxed and could not be taxed were persons, divorced from property. Those statute and charter provisions set forth in the Appendix to this Brief, and the reasoning of the Michigan Court in this case and in *Continental*, thus make clear, without need or desirability of extended discussion, that the decision was correct as a matter of state law and presents no reviewable federal question. Petitioners had no statutory or charter authority to impose the taxes.

III.

THE CASE HAS LITTLE FUTURE IMPORTANCE

Petitioners recite that they are currently engaged in other litigation involving similar issues. This statement, while true, does not tell the Court enough and hardly cloaks the instant case with significance. First, the decision of the Michigan Supreme Court here has no real bearing upon any tax year after 1959 because of the statutory amendment of 1959 which conferred express statutory authority for imposition of the tax. Second, in years prior to 1959, these petitioners did not seek to impose this type of taxation, subject to the single exception noted below of the "inventory cases."

With respect to these years prior to 1959, without known exception the cases pending in Detroit and Wayne County involve factual issues of the type considered in *American Motors Corporation v. Kyriska*, 274 Wis. 315, 80 N.W. 2d 363 (1957) and in *General Dynamics v. Los Angeles County*, *supra*, namely, whether upon a review of the entire contractual and factual relationship between the parties, it should be judicially found that title to the property (which in every instance is inventory in process of manu-

facture and subject to progress payment clauses, and not as here machinery clearly owned by the United States) is in the United States or in the defense contractor. This case does not involve nor control that issue, and it is as each of those cases is tried, it appears that the contractor is the owner, the inventory in his possession is clearly taxable.

What is left then, is a small group of 1959 and 1960 cases in which the City of Detroit and the County of Wayne attempted to impose their "personal taxation" upon the possessors of United States-owned machinery. These cases are believed to be very few in number, the instant case is believed to involve the largest, or near largest, tax payment, and the cases of course have no significance outside of the City of Detroit itself.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

CONSTITUTION, STATUTE AND CHARTER PROVISIONS

Constitution of Michigan of 1908, as amended

ARTICLE X

Finance and Taxation

Sec. 3. The legislature shall provide by law a uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: Provided, That the legislature shall provide by law a uniform rule of taxation for such property as shall be assessed by a state board of assessors, and the rate of taxation on such property shall be the rate which the state board of assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes.

Sec. 4. The legislature may by law impose specific taxes, which shall be uniform upon the classes upon which they operate.

Sec. 7. All assessments hereafter authorized shall be on property at its cash value.

Sec. 21. The total amount of taxes assessed against property for all purposes in any one year shall not exceed 1 and ½ per cent of the assessed valuation of said property, except taxes levied for the payment of interest and principal on obligations heretofore incurred, which sums shall be separately assessed in all cases: Provided, that

this limitation may be increased for a period of not to exceed 5 years at any one time, to not more than a total of 5 per cent of the assessed valuation, by a ⅔ vote of the electors of any assessing district or when provided for by the charter of a municipal corporation; Provided further, that this limitation shall not apply to taxes levied in the year 1932.

Compiled Laws of Michigan, 1948, Sec. 211.24

The supervisor shall estimate, according to his best information and judgment, the true cash value of every parcel of real property and set the same down opposite such parcel. He shall also estimate the true cash value of all the personal property of each person, and set the same down opposite the name of such person. In determining the property to be assessed and in estimating such value, he shall not be bound to follow the statements of any person, but shall exercise his best judgment. Property assessed to one other than the owner shall be assessed separately from his property and shall show in what capacity it is assessed to him, whether as agent, guardian or otherwise. Two or more persons not being copartners, owning personal property in common, may each be assessed severally for his portion thereof. Undivided interests in lands owned by tenants in common, or joint tenants not being copartners, may be assessed to the owners thereof. * * *

Compiled Laws of Michigan, 1948, Sec. 211.40

And all personal taxes hereafter levied or assessed shall also be a first lien, prior, superior and paramount, on all personal property of such persons so assessed from and after the first day of December in each year for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city or village, and so remain until paid, which said tax liens shall take precedence over all other claims, encumbrances and liens upon said personal property whatsoever, whether created by chattel mortgage, title retaining contract, execution, or upon any other final process of a court, attachment, replevin, judgment or otherwise; and whether such liens, claims and encumbrances created by chattel mortgage, title retaining contract, execution or upon any other final process of a court, attachment, replevin, judgment or otherwise, become effective prior to the effective date of this act or subsequent thereto, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy such lien, except where such personal property is actually sold in the regular course of retail trade. The personal property taxes hereafter levied or assessed by any city or village shall be a first lien, prior, superior and paramount to any other claims, liens and encumbrances whatsoever upon the personal property assessed as herein provided, any provisions in the charter of such cities or villages to the contrary notwithstanding.

Compiled Laws of Michigan, 1948, Sec. 211.47

If any person, firm or corporation shall neglect or refuse to pay any tax assessed to him or them, the township or city treasurer, as the case may be, shall collect the same by seizing the personal property of such person, firm or corporation, to an amount sufficient to pay such tax, fees and charges for subsequent sale, wherever the same may be found [in the state], and from which seizure no property shall be exempt: * * * If the property so distrained cannot be sold for want of bidders, and in such cases only, the treasurer shall return a statement of the fact, and such tax shall be returned as unpaid. The township treasurer, if otherwise unable to collect a tax on personal property, may sue the person, firm or corporation to whom it is assessed, in the name of the township, village or city, and garnishee any debtor or debtors of such person, firm or corporation. The tax roll shall be prima facie evidence of the debt sought to be recovered: Provided, That when any person having possession of the personal property of any other person, firm or corporation shall be assessed for such property and shall be obliged to pay the taxes thereon, such person, firm or corporation so paying the taxes, may recover of the person, firm or corporation for whose benefit the taxes were paid, the money so paid, with the interest thereon, in an action of assumpsit: * * *.

Act 266, Public Acts of Michigan of 1959

Section 14 of Act No. 206 of the Public Acts of 1893, as last amended by Act No. 209 of the Public Acts of 1958, being section 211.14 of the Compiled Laws of 1948, is hereby amended to read as follows: * * *

Fifth * * * Personal property mortgage or pledged shall be deemed the property of the person in possession thereof and may be assessed to him, and personal property not otherwise taxed under this act which is in the possession of any person, firm or corporation using same in connection with a business conducted for profit shall be deemed the property of such person for taxation and assessed to him accordingly; * * *.

Charter of the City of Detroit, 1918, as amended

Title VI

CHAPTER II

Sec. 1. All real and personal property within the city subject to taxation by the laws of this state shall be assessed at its true cash value by the board of assessors herein provided. Assessments shall be made according to assessment districts, the boundary lines of which shall conform to ward boundaries as established from time to time by the common council. There shall be an assessment roll in book form for each such district. All taxes upon personal property may be assessed in any district, whether the person assessed is a resident of such district or not.

Sec. 5. The common council, after receiving said assessment rolls, shall at 10 o'clock a.m. of the first succeeding day, proceed to consider the same, and any person who has previously complained to the board of assessors as

herein provided in section four, considering himself aggrieved by the assessment of his property and the decision of the board of assessors thereon, may appeal to the council; * * *

CHAPTER IV

SEC. 1. All city taxes shall be due and payable on the fifteenth day of July in each year, and on that date shall become a lien on the property taxed. The owners or occupants or parties in interest to any real estate assessed hereunder, shall be liable to pay such taxes and all assessments levied in accordance herewith. The owners or persons in possession of any personal property shall pay all taxes assessed thereon.

SEC. 26. * * * All city taxes upon personal property shall become on said fifteenth day of July a lien thereon and so remain until paid, and no transfer of the personal property assessed shall operate to divest or destroy such lien.

SEC. 27. All city taxes upon personal property and real estate and special assessments thereon in addition to being a lien upon the property assessed shall become a debt against the owner from the time of the listing of the property for assessment, and shall remain a debt against the owner of the property or his estate after his death, until the same are paid.